

(b) *Systems to accept and disseminate swap data in connection with real-time public reporting.* A registered swap data repository shall establish such electronic systems as are necessary to accept and publicly disseminate real-time swap data submitted to meet the real-time public reporting obligations of part 43 of this chapter. Any electronic systems established for this purpose must be capable of accepting and ensuring the public dissemination of all data fields required by part 43 of this chapter.

(c) *Duty to notify the commission of untimely data.* A registered swap data repository must notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of this chapter.

§ 49.16 Privacy and confidentiality requirements of swap data repositories.

(a) Each swap data repository shall:

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all SDR Information that is not subject to real-time public reporting set forth in part 43 of this chapter. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR Information (except for swap data disseminated under part 43) that the swap data repository shares with affiliates and non-affiliated third parties; and

(2) Establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of:

(i) Section 8 Material;

(ii) Other SDR Information; and/or

(iii) Intellectual property, such as trading strategies or portfolio positions, by the swap data repository or any person associated with the swap data repository. Such safeguards, policies, and procedures shall include, but are not limited to,

(A) limiting access to such Section 8 Material, other SDR Information, and intellectual property,

(B) standards controlling persons associated with the swap data repository trading for their personal benefit or the benefit of others, and

(C) adequate oversight to ensure compliance with this subparagraph.

(b) Swap data repositories shall not, as a condition of accepting swap data from reporting entities, require the waiver of any privacy rights by such reporting entities.

(c) Subject to Section 8 of the Act, swap data repositories may disclose aggregated swap data on a voluntary basis or as requested, in the form and manner, prescribed by the Commission.

§ 49.17 Access to SDR data.

(a) *Purpose.* This Section provides a procedure by which the Commission, other domestic regulators and foreign regulators may obtain access to the swaps data held and maintained by registered swap data repositories. Except as specifically set forth in this Regulation, the Commission's duties and obligations regarding the confidentiality of business transactions or market positions of any person and trade secrets or names of customers identified in Section 8 of the Act are not affected.

(b) *Definitions.* For purposes of this § 49.17, the following terms shall be defined as follows:

(1) *Appropriate Domestic Regulator.* The term "Appropriate Domestic Regulator" shall mean:

(i) The Securities and Exchange Commission;

(ii) Each prudential regulator identified in Section 1a(39) of the Act with respect to requests related to any of such regulator's statutory authorities, without limitation to the activities listed for each regulator in Section 1a(39);

(iii) The Financial Stability Oversight Council;

(iv) The Department of Justice;

(v) Any Federal Reserve Bank;

(vi) The Office of Financial Research; and

(vii) Any other person the Commission deems appropriate.

(2) *Appropriate Foreign Regulator.* The term "Appropriate Foreign Regulator" shall mean those Foreign Regulators

with an existing memorandum of understanding or other similar type of information sharing arrangement executed with the Commission and/or Foreign Regulators without an MOU as determined on a case-by-case basis by the Commission.

(i) *Filing requirements.* For those Foreign Regulators who do not currently have a memorandum of understanding with the Commission, the Commission has determined to provide the following filing process for those Foreign Regulators that may require swap data or information maintained by a registered swap data repository. The filing requirement set forth in this § 49.17 will assist the Commission in its analysis of whether a specific Foreign Regulator should be considered “appropriate” for purposes of Section 21(c)(7) of the Act.

(A) The Foreign Regulator is required to file an application in the form and manner prescribed by the Commission.

(B) The Foreign Regulator in its application is required to provide sufficient facts and procedures to permit the Commission to analyze whether the Foreign Regulator employs appropriate confidentiality procedures and to satisfy itself that the information will be disclosed only as permitted by Section 8(e) of the Act.

(ii) The Commission in its analysis of Foreign Regulator applications shall be satisfied that any information potentially provided by a registered swap data repository will not be disclosed except in limited circumstances, such as an adjudicatory action or proceeding involving the Foreign Regulator, as identified in Section 8 of the Act.

(iii) The Commission reserves the right in connection with any determination of an “Appropriate Foreign Regulator” to revisit or reassess a prior determination consistent with the Act.

(3) *Direct electronic access.* For the purposes of this regulation, the term “direct electronic access” shall mean an electronic system, platform or framework that provides Internet or Web-based access to real-time swap transaction data and also provides scheduled data transfers to Commission electronic systems.

(c) *Commission access.*

(1) *Direct electronic access.* A registered swap data repository shall provide direct electronic access to the Commission or the Commission’s designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations.

(2) *Monitoring tools.* A registered swap data repository is required to provide the Commission with proper tools for the monitoring, screening and analyzing of swap transaction data, including, but not limited to, Web-based services, services that provide automated transfer of data to Commission systems, various software and access to the staff of the swap data repository and/or third-party service providers or agents familiar with the operations of the registered swap data repository, which can provide assistance to the Commission regarding data structure and content. These monitoring tools shall be substantially similar in analytical capability as those provided to the compliance staff and the Chief Compliance Officer of the swap data repository.

(3) *Authorized users.* The swap transaction data provided to the Commission by a registered swap data repository shall be accessible only by authorized users. The swap data repository shall maintain and provide a list of authorized users in the manner and frequency determined by the Commission.

(d) *Other regulators—(1) General Procedure for Gaining Access to Registered Swap Data Repository Data.* Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking to gain access to the swap data maintained by a swap data repository are required to apply for access by filing a request for access with the registered swap data repository and certifying that it is acting within the scope of its jurisdiction.

(2) *Appropriate domestic regulator with regulatory responsibility over a swap data repository.* An Appropriate Domestic Regulator that has regulatory jurisdiction over a swap data repository registered with it pursuant to a separate statutory authority that is also registered with the Commission pursuant to this chapter is not subject to this

paragraph (d) and § 49.18(b) as long as the following conditions are met:

(i) The appropriate domestic regulator executes a memorandum of understanding or similar information sharing arrangement with the Commission; and

(ii) The Commission, consistent with Section 21(c)(4)(A) of the Act, designates the Appropriate Domestic Regulator to receive direct electronic access.

(3) *Appropriate foreign regulator with regulatory responsibility over a swap data repository.* An Appropriate Foreign Regulator that has supervisory authority over a swap data repository registered with it pursuant to foreign law and/or regulation that is also registered with the Commission pursuant to this chapter is not otherwise subject to this paragraph (d) and § 49.18(b).

(4) *Obligations of the registered swap data repository in connection with appropriate domestic regulator or appropriate foreign regulator requests for data access.*

(i) A registered swap data repository shall promptly notify the Commission regarding any request received by an Appropriate Domestic Regulator or Appropriate Foreign Regulator to gain access to the swaps transaction data maintained by such swap data repository.

(ii) The registered swap data repository shall notify the Commission electronically in a format specified by the Secretary of the Commission.

(5) *Timing.* Once the swap data repository provides the Commission with notification of a request for data access by an Appropriate Domestic Regulator or Appropriate Foreign Regulator as required by paragraph (d)(2) of this section, such swap data repository shall provide access to the requested swap data.

(6) *Confidentiality and indemnification agreement.* Consistent with § 49.18 of this part, the Appropriate Domestic Regulator or Appropriate Foreign Regulator prior to receipt of any requested data or information shall execute a “Confidentiality and Indemnification Agreement” with the registered swap data repository as set forth in Section 21(d) of the Act.

(e) *Third-party service providers to a registered swap data repository.* Access

to the data and information maintained by a registered swap data repository may be necessary for certain third parties that provide various technology and data-related services to a registered swap data repository. Third-party access to the swap data maintained by a swap data repository is permissible subject to the following conditions:

(1) Both the registered swap data repository and the third party service provider shall have strict confidentiality procedures that protect data and information from improper disclosure.

(2) Prior to swap data access, the third-party service provider and the registered swap data repository shall execute a “Confidentiality Agreement” setting forth minimum confidentiality procedures and permissible uses of the information maintained by the swap data repository that are equivalent to the privacy procedures for swap data repositories outlined in § 49.16.

(f) *Access by market participants*—(1) *General.* Access of swap data maintained by the registered swap data repository to market participants is generally prohibited.

(2) *Exception.* Data and information related to a particular swap that is maintained by the registered swap data repository may be accessed by either counterparty to that particular swap. However, the data and information maintained by the registered swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty’s clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with Commission regulations in §§ 1.74, 23.610, and 37.12(b)(7) of this chapter.

(g) *Commercial uses of data accepted and maintained by the registered swap data repository prohibited.* Swap data accepted and maintained by the swap data repository generally may not be used for commercial or business purposes by the swap data repository or any of its affiliated entities.

(1) The registered swap data repository is required to adopt and implement adequate “firewalls” or controls to protect the reported swap data required to be maintained under § 49.12 of this part and Section 21(b) of the Act from any improper commercial use.

(2) *Exception.* (A) The swap dealer, counterparty or any other registered entity that submits the swap data maintained by the registered swap data repository may permit the commercial or business use of that data by express written consent.

(B) Swap data repositories shall not as a condition of the reporting of swap transaction data require a reporting party to consent to the use of any reported data for commercial or business purposes.

(3) Swap data repositories responsible for the public dissemination of real-time swap data shall not make commercial use of such data prior to its public dissemination.

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§ 49.18 Confidentiality and indemnification agreement.

(a) *Purpose.* This section sets forth the obligations of registered swap data repositories to execute a “Confidentiality and Indemnification Agreement” in connection with providing access to swap data to certain domestic and foreign regulators.

(b) *Confidentiality and indemnification agreement.* Prior to the registered swap data repository providing access to the swap data with any Appropriate Domestic Regulator or Appropriate Foreign Regulator as defined in § 49.17(b), the swap data repository shall receive a written agreement from each such entity stating that the entity shall abide by the confidentiality requirements described in Section 8 of the Act relating to the swap data that is provided; and each such entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under Section 8 of the Act.

(c) *Certain appropriate domestic and foreign regulators with regulatory responsibility over a swap data repository.* The requirements set forth above in para-

graph (b) shall not apply to certain Appropriate Domestic and Foreign Regulators with regulatory responsibility over a swap data repository as described in § 49.17(d)(2) and (3). The swap data repository and such Appropriate Domestic or Foreign Regulator in each case is required to comply with Section 8 of the Act and any other relevant statutory confidentiality provisions.

§ 49.19 Core principles applicable to registered swap data repositories.

(a) *Compliance with core principles.* To be registered, and maintain registration, a swap data repository shall comply with the core principles as described in this paragraph. Unless otherwise determined by the Commission by rule or regulation, a swap data repository shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this paragraph.

(b) *Antitrust considerations (Core Principle 1).* Unless necessary or appropriate to achieve the purposes of the Act, a registered swap data repository shall avoid adopting any rule or taking any action that results in any unreasonable restraint of trade; or imposing any material anticompetitive burden on trading, clearing or reporting swaps.

(c) *Governance arrangements (Core Principle 2).* Registered swap data repositories shall establish governance arrangements as set forth in § 49.20.

(d) *Conflicts of interest (Core Principle 3).* Registered swap data repositories shall manage and minimize conflicts of interest and establish processes for resolving such conflicts of interest as set forth in § 49.21.

(e) *Additional duties (Core Principle 4).* Registered swap data repositories shall also comply with the following additional duties:

(1) *Financial resources.* Registered swap data repositories shall maintain sufficient financial resources as set forth in § 49.25;

(2) *Disclosure requirements of registered swap data repositories.* Registered swap data repositories shall furnish an appropriate disclosure document setting forth the risks and costs of swap data repository services as detailed in § 49.26; and